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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:

Applicant : Anthony John Bell et al.
Serial No. : 09/784,980
Filed : February 16, 2001
For : TASTE MODIFIED HARD
CONFECTIONERY COMPOSITIONS
CONTAINING FUNCTIONAL
INGREDIENTS
Examiner : Robert A. Madsen
Art Unit : 1761
Attorney Docket No. : 5641C1-07-LAV

I HEREBY CERTIFY THAT THIS CORRESPONDENCE IS BEING DEPOSITED WITH THE UNITED STATES POSTAL SERVICE AS FIRST CLASS MAIL IN AN ENVELOPE ADDRESSED TO: COMMISSIONER FOR PATENTS, P.O. BOX 1450, ALEXANDRIA, VIRGINIA 22313-1450

ON December 19, 2003

NAME Jill S. Garretson

SIGNATURE

Commissioner for Patents
P.O. Box 1450
Alexandria, Virginia 22313-1450

December 19, 2003

RESPONSE

Dear Sir:

This is in response to the Office Action of June 19, 2003. Applicants have filed concurrently herewith a Petition for a three month extension of time along with the requisite fee extending the date for response to December 19, 2003.

Pursuant to the previous election, the claims of the present application are claims 1-9 and 28-36. Applicants reserve the right to pursue the non-elected claims by the filing of a divisional application.

Claims 1, 2, 4, 6-9 stand rejected as anticipated by Cherukuri et al. (U.S. Patent No. 6,482,465). The rejection is hereby traversed and reconsideration is respectfully requested.

The present invention is directed to a hard boiled candy composition in which the composition comprises a confectionery base, at least one botanical having an unpleasant mouthfeel and from about 0.5% to about 5.0% by weight of one or more partially hydrogenated vegetable oils or saturated fats in which the amount of the oil or fat is effective to suppress the unpleasant mouthfeel of the botanical. The present invention is specifically directed to hard boiled candies. As indicated beginning at the bottom of page 6 of the application, hard boil candy compositions generally have a candy base composed of a mixture of sugar and other carbohydrate bulking agents kept in an amorphous or glassy condition. Hard boiled candies are prepared by methods all of which involve cooking including fire cookers, vacuum cookers, scrape-surface cookers and the like as described at page 7, lines 16-24.

Cherukuri et al. is directed to a method of producing chewy confectionery using high or low shear mixing with no cooking to produce a mass which is well hydrated and yet has no phase separation of moisture (column 1, lines 28-36 and

the Abstract). Therefore, Cherukuri et al. does not relate to hard boiled candy compositions of the type claimed in the present invention. It is noted that the Office Action indicates that the recited composition does not require a hard boiled confectionery base. However, the present invention is specifically directed to hard boiled candy compositions. Therefore, those ingredients set forth in the list of claimed ingredients including the confectionery base and those ingredients not recited but included because of the word "comprising" must be suitable for a hard boiled candy composition. Therefore, the present invention as claimed clearly distinguishes over Cherukuri et al. which is clearly not directed to a hard boiled candy composition. Thus, the rejection set forth in Paragraph 3 of the Office Action based on Cherukuri et al. must be withdrawn.

Claims 1, 2, 4-9, 28, 29, 31-36 stand rejected as anticipated by Katsuragi et al. The rejection is hereby traversed and reconsideration is respectfully requested. Katsuragi et al. does not employ fats and oils to mask unpleasant mouthfeel. The anti-bitterness agent employed in the reference is the result of esterification of a mono- or di-glyceride with a polycarboxylic acid or a reactive derivative thereof. It is this material which is used to mask unpleasant bitterness associated with certain active agents. As indicated at the top of page 4 of the reference, the active agent may be dissolved in a solvent in order to make it suitable for inclusion in an edible composition. The solvent can be vegetable fats and oils. However, there is no teaching or suggest that the fats and oils provide any useful function other than the use of a solvent. It can be assumed that there is no anti-unpleasant mouthfeel effect

for the fats and oils if it is necessary to employ the anti-bitterness agent which is the essential feature of the invention set forth in the reference. It is therefore submitted that Katsuragi et al. does not teach or suggest a hard boiled candy composition which includes an effective amount of the designated fats and oils to provide suppression of unpleasant mouthfeel.

Claims 1, 2, 4, 6-9, 28, 29, 31 and 33-36 stand rejected as unpatentable over Nakano et al. in view of Cherukuri et al. Nakano et al. is directed to a tablet confection containing microcapsules of an active agent such as a nutraceutical. The microcapsules are formed by an encapsulating material which is described in Paragraph 18 as an edible gel which is composed of a polysaccharide and protein with macromolecular structure and particularly exemplified by pectin, agar, carrageenan and the like. There is no teaching or suggestion in this reference of the use of the claimed fats and oils for the purpose of masking unpleasant mouthfeel. Quite clearly, Nakano et al. takes an entirely different approach to mask the unpleasant effect of certain active agents. The approach taken is one of microencapsulation using entirely different materials than those claimed in the present application.

The combination of Nakano et al. and Cherukuri et al. does not lead one of ordinary skill in the art to the present invention. As previously indicated, Cherukuri et al. relates to entirely different type of products in which cooking is not permitted so that the reference does not teach or use hard boiled candy compositions. Nakano et

al. is directed to an entirely different way of dealing with the unpleasant taste properties of certain active agents. Microencapsulation, as previously indicated, is an entirely different approach than the approach taken in the present application. It is therefore submitted that the combination of Nakano et al. and Cherukuri et al. does not lead one of ordinary skill in the art to the presently claimed invention.

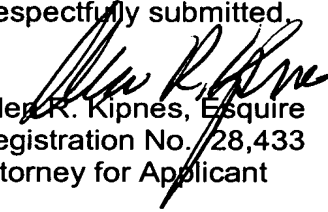
Finally, claims 3 and 30 stand rejected as obvious over the combination of Katsuragi et al. in view of Rayment (Australian Patent Document No. 9671904). Rayment discloses therapeutic compositions which contain Echinacea extract. Quite obviously, Applicants have not invented Echinacea. It is also clear that the existence of Echinacea and its use in the Katsuragi et al. compositions does not lead one of ordinary skill in the art to the present invention. As previously indicated, Katsuragi et al. does not employ fats and oils for masking unpleasant mouthfeel. Fats and oils are used as a solvent for the agent which is used for masking. Therefore, the fats and oils are used for an entirely different purpose and it is clear that the fats and oils as used in Katsuragi et al. does not have a masking effect but instead Katsuragi et al. employs the ester of a mono- or di-glyceride with a polycarboxylic acid or derivative thereof for that purpose.

In view of the foregoing, Applicants submit that the present application is in condition for allowance and early passage to issue is therefore deemed proper and is respectfully requested.

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It is believed that no fee is due in connection with this response. However, if any fee is due, it should be charged to Deposit Account No. 23-0510.

Respectfully submitted,


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